NO. 80-1060

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

BRADDOCK EUGENE TAYLOR,
Petitioner

V.

THE STATE OF TEXAS
Respondent

On Petition For Writ of Certiorari
To The Texas Court of Criminal Appeals

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

I. Whether Petitioner's confession was improperly admitted at his Texas murder trial as the fruit of an unconstitutional arrest?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

INDEX OF AUTHORITIES iii

OPINION BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS 2

STATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT 2

ARGUMENT 2

CONCLUSION 7

INDEX OF AUTHORITIES

Cases	Page
Brown v. Illinois, 442 U.S. 590 (1975)	4,5,6,7
Dunaway v. New York, 442 U.S. 200 (1979)	4,5
Graver Mfg. Co. v. Linde Co., 336 U.S. 271 (1949)	4
Rawlings v. Kentucky, .U.S.., 100 S.Ct. 2556 (1980)	5,7
Tacon v. Arizona, 410 U.S. 351 (1973)	4

Constitutional and Statutory Provisions and Court Rules

Fourth Amendment, United States Constitution	2,4
Fifth Amendment, United States Constitution	4
28 U.S.C. § 1257(3)	1
Rule 17, Rules of the Supreme Court	2

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

NOW COMES the State of Texas, Respondent herein, by and through its attorney, the Attorney General of Texas, and in response to the petition for writ of certiorari submits this brief in opposition.

OPINION BELOW

Petitioner's conviction was affirmed by the Texas Court of Criminal Appeals on September 10, 1980, in an unpublished per curiam opinion (No. 64,591). The opinion is reproduced as the appendix to the petition for certiorari.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS

Petitioner's claim is based upon the Fourth Amendment to the United States Constitution.

STATEMENT OF THE CASE

Respondent is in substantial agreement with Petitioner's statement of the case. Petitioner omitted the fact, however, that the police officers asked an assistant district attorney if there was probable cause to arrest Petitioner. The arrest was accomplished only after the circumstances leading to it had been reviewed and approved by the district attorney.

SUMMARY OF ARGUMENT

There are no special and important reasons to consider the issue presented.

Petitioner is essentially asking for a review of the factual determinations of the Texas courts; therefore, this Court would not be justified in exercising its jurisdiction to grant the writ of certiorari.

Petitioner has failed to prove that his arrest was illegal, but assuming, arguendo, that it was, the facts reveal that Petitioner decided to confess as an act of free will which was unaffected by the alleged illegality of the arrest.

ARGUMENT

I.

THE QUESTION PRESENTED FOR REVIEW IS UNWORTHY OF THIS COURT'S ATTENTION

Rule 17 of the Rules of theSupreme Court provides that review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons

therefor. Petitioner has advanced no special or important reasons in this case, and none exists.

II.

WHETHER PETITIONER WILLINGLY MADE HIS CONFESSION IS ESSENTIALY A FACTUAL QUESTION UNWORTHY OF THIS COURT'S ATTENTION.

In finding that the trial court correctly concluded that Petitioner's confession was voluntary, the Texas Court of Criminal Appeals determined:

> Appellant was given his warnings at least eight times before finally signing the statement. He acknowledged that he understood these warnings and was willing to talk to officers. There is uncontroverted evidence that he was well treated by authorities before giving the statement. There is no indication that he was questioned during the night that he was held as a 'material witness.' He gave the confession freely and voluntarily. We find that appellant's statement was not the result of an exploitation of the alleged unlawful arrest and custody.

Taylor v. State, (No. 64,591); writ of certiorari, appendix at 4. Petitioner's challenge to the Court of Criminal Appeals' conclusion that the confession was not the result of an unlawful arrest is primarily based upon Petitioner's disagreement with that court's factual determination.

Such a factual dispute does not justify an exercise of this Court's certiorari jurisdiction. The trial court and the Court of Criminal Appeals both found facts sufficient to support a finding of a proper confession. "A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to

review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Mfg. Co. v. Linde Co.*, 336 U.S. 271, 275 (1949).

In *Tacon v. Arizona*, 410 U.S. 351 (1973), this Court granted certiorari to consider the constitutional limits of a state's authority to try in abstentia a person who had voluntarily left the state and who, for financial reasons, was unable to return to the state. The record demonstrated, however, that the issue had not been presented to the Arizona Supreme Court. In dismissing the case this Court observed, "The only related issue actually raised below is whether petitioner's conduct amounted to a knowing and intelligent waiver of his right to be present at trial. Since this is primarily a factual issue which does not, by itself, justify the exercise of our certiorari jurisdiction, the writ of certiorari is dismissed as improvidently granted." *Tacon v. Arizona*, 410 U.S. at 352. This reasoning is directly applicable to the present case; therefore, the writ of certiorari should not be granted.

III.

PETITIONER'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED WHEN HIS CONFESSION WAS ADMITTED INTO EVIDENCE.

Because of his reliance on *Brown v. Illinois*, 422 U.S. 590 (1975), and *Dunaway v. New York*, 442 U.S. 200 (1979), it appears that Petitioner is challenging the introduction of his confession into evidence because its introduction violates his Fourth Amendment rights, rather than his Fifth Amendment rights. For many reasons, Petitioner fails to establish such a violation.

Petitioner has failed to prove that his arrest was illegal. Although he characterizes the arrest as "investigatory" and relies heavily on the fact that he was booked into jail as a "material witness," (writ of

certiorari at 7), the testimony of the police officers at his *Jackson v. Denno* hearing establishes that the arrest may not have been investigatory. The fact that Petitioner knew the location of the deceased's body, that he was unwilling to tell the police details relating to the time he last saw the deceased and that many of his alibis were proved false may have been the basis of Officer Alvarado's belief that Petitioner was arrested for murder, rather than for investigatory purposes. Petitioner totally fails to address the question of the illegality of the arrest.

Assuming, arguendo, that the arrest was illegal, Petitioner has failed to establish that his confession was obtained by the exploitation of an illegal detention.

> The question whether a confession is the product of a free will ... must be answered on the facts of each case. No single fact is dispositive ... The Miranda warnings are an important factor, to be sure, in determining whether the confession is obtained by exploitation of an illegal arrest. But they are not the only factor to be considered. The temporal proximity of the arrest and the confession, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct are all relevant. The voluntariness of the statement is a threshold requirement.

Brown v. Illinois, 422 U.S. at 603-04 (citations and footnotes omitted). *See, Dunaway v. New York*, 442 U.S. at 218; *Rawlings v. Kentucky*, *_U.S. at_*, *100 S.Ct. 2556, 2563 (1980).*

First, it is undisputed that Petitioner was continually advised of his Miranda rights throughout his dentention. Petitioner admits that he was frequently told of his rights, and he has never claimed that he did not understand them.

Second, *Brown* requires an inquiry as to the "temporal proximity of the arrest and the confession." Petitioner was taken into custody at approximatly 5:00 p.m. on May 22, 1979. Police officers spoke with him in an office at the police station and he was placed in the city jail overnight. The next morning Petitioner was taken to an office of the Department of Public Safety where he voluntarily submitted to a polygraph examination. Later he again spoke with a police officer and made his confession. Obviously, a great amount of time passed between the initial arrest and the confession.

Third, *Brown* requires a review of intervening circumstances which may have occurred between the initial detention and the confession. It appears that approximately sixteen hours elapsed between the initial detention and Petitioner's statements. During that time Petitioner slept; he probably ate two meals; he was driven to police offices, the city jail, a Department of Public Safety office and returned to police offices; and he took a polygraph examination.

Fourth, *Brown* requires a consideration of "the purpose and flagrancy of the official misconduct." To establish that the police acated improperly, Petitioner concludes that his arrest, like the arrest in *Brown*, was investigatory. Although the term "material witness" was used when Petitioner was booked into jail, other facts establish that the police were aware that Petitioner was an acatual murder suspect. Officer Alvarado believed that Petitioner was booked for murder. Officer Escobedo acknowledged that Petitioner was booked as a material witness, but a review of her entire testimony at the *Jackson v. Denno* hearing indicates that she, too; believed Petitioner committed murder. Further, the police officers took the precaution of contacting an assistant district attorney to be sure that there was probable cause to arrest Petitioner. Petitioner has never claimed that he

was abused in any manner by the police. His entire claim of official misconduct rests upon a conclusion that the arrest was illegal, a fact which he fails to establish.

Finally, *Brown* requires that the voluntariness of the confession be established. Petitioner has never claimed that his statement was involuntary. Although Petitioner alludes to the fact that the police officers believed he was acting in an erratic manner during his detention, he admits that "a person may evidence signs of both lunacy and guilt." Writ of certiorari at 6. Further, at the police officers' request, Petitioner was examined by a psychiatrist who concluded that he was sane.

An examination of the totality of the circumstances of this case reveals that Petitioner's arrest was legal and, further that this confession was an act of free will. *Rawlings v. Kentucky*, —U.S. at —, 100 S.Ct. 2564.

CONCLUSION

For the above reasons, Respondent respectfully prays that Petitioner's writ of certiorari be denied.

Respectfully submitted,

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